

RESPONSE

The examiner states in the Office Action Summary that claims numbered 5-9, 11, 14-15, 17, 20 and 44-49 are pending in the application; claims numbered 8, 9, 11, 20 and 44-49 are withdrawn from consideration; claims numbered 2, 5-7, 14-15 and 17 are rejected. Applicant notes that following entry of the amendment submitted May 14, 2007, claims numbered 2, 5-9, 11, 14, 15, 17, 20 and 44-49 were pending and at issue.

Claims numbered 2 and 17 are amended herein. Claims numbered 1, 12, 13, 20 and 44-49 are cancelled herein. Following entry of the enclosed amendment, claims numbered 2, 5-9, 14, 15 and 17 are pending.

(1) The examiner states claims numbered 2, 5-7 and 14-15 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one of skill in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant has amended claim number 2 to include further structural limitations and specific diseases/conditions benefiting from an enhancement of mitochondrial respiration.

Applicant has amended claim number 2 to replace the term “cancer” with specific forms of cancer.

Applicant has amended claim number 2 to remove the term “prodrug.”

Applicant believes the amendments presented herein address the examiner’s reasons for rejection. Applicant is not required to prove efficacy of particular compounds with respect to particular disease states to the USPTO. The FDA properly determines these parameters.

Applicant respectfully requests reconsideration and withdrawal of the rejection of claims numbered 2, 5-7 and 14-15 under 35 U.S.C. §112, first paragraph.

(2) The examiner states claims numbered 2, 5-7 and 14, 15 and 17 are rejected under 35 U.S.C. §103(a) as unpatentable over Bachynsky (U.S. Patent No. 4,673,691) in view of Batt et al. (U.S. Patent No. 5,593,994) and Rink et al (U.S. Patent No. 5,739,106)

Applicant has amended claim number 2 to replace formula (I) with formula (III) and remove -NO and -NO₂ as possible substituents; and amended claim number 17 to recite only the

compound 4-hydroxy-3-nitroacetophenone.

Applicant respectfully requests reconsideration and withdrawal of the rejection of claim number 2, 5-7 and 14, 15 and 17 under 35 U.S.C. §103(a).

Applicant respectfully requests reconsideration and rejoinder of the withdrawn claims remaining after entry of this amendment.

The examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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/ Rosemarie R. Wilk-Orescan, Reg. No. 45,220 /

Rosemarie R. Wilk-Orescan
Registration Number 45,220
Novo Nordisk Inc.
Customer Number 23650
(609) 987-5969